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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,884	06/14/2005	Holger Auchter	016906-0397	8845
22428	7590	11/09/2007		
FOLEY AND LARDNER LLP			EXAMINER	
SUITE 500			BOCHNA, DAVID	
3000 K STREET NW				
WASHINGTON, DC 20007			ART UNIT	PAPER NUMBER
			3679	
			MAIL DATE	DELIVERY MODE
			11/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,884

Applicant(s)

AUCHTER ET AL.

Examiner

David E. Bochna

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed on 04 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-9 and 12-18 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 7-9 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hunter et al '499.

In regard to claim 1, Hunter et al. '499 discloses a circumferential clamp 30 (“for fastening and connecting junction tubes on a heat exchanger in a motor vehicle” is intended use language), wherein at least one end region of the clamp 36, 38 is bent away from the tubes back toward the body 30 of the clamp and

wherein the at least one end region of the clamp is bent back in such a way that it forms approximately the shape of a rounded triangle (see fig. 5).

In regard to claim 2, wherein the bent-back end region 39 of the clamp has at least one sharp edge.

In regard to claim 3, wherein, in the assembled state, the bent-back end region 39 is in bearing contact against at least one flange 12a or bead of a tube.

In regard to claim 4, wherein the bent-back end region has a sharp edge 39 in the region of bearing contacts (edge connecting 36 and 39).

In regard to claim 7, wherein the end regions of the clamp 36, 38 are bent back in such a way that they form approximately the shape of a rounded triangle (see fig. 5).

In regard to claim 8, the triangles have no angle above 90 degrees.

In regard to claim 9, the triangles are approximately equilateral.

In regard to claim 12, the clamp 30 is designed essentially symmetrically with respect to a transverse axis (see fig. 5).

In regard to claim 13, Hunter discloses a tube and clamp assembly comprising:

a first tube 10A;

a second tube 10B; and

a circumferential clamp 30 for fastening and connecting the first tube to the second tube, wherein at least one end region of the clamp 36 is bent away from the tubes back toward the body 30 of the clamp.

3. Claims 1-2 and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by McCord.

In regard to claim 1, McCord discloses (fig. 5b) a circumferential clamp 10 (“for fastening and connecting junction tubes on a heat exchanger in a motor vehicle” is intended use language), wherein at least one end region of the clamp (clamp around 20) is bent away from the tubes back toward the body 10 of the clamp and

wherein the at least one end region of the clamp is bent back in such a way that it forms approximately the shape of a rounded triangle 20.

In regard to claim 2, wherein the bent-back end region of the clamp has at least one sharp edge (very end bend that is welded onto 10).

In regard to claim 13, McCord discloses a tube and clamp assembly comprising:

a first tube 14;

a second tube 12; and

a circumferential clamp 10 for fastening and connecting the first tube to the second tube, wherein at least one end region of the clamp is bent away from the tubes back toward the body of the clamp and wherein the at least one end region of the clamp is bent back in such a way that it forms approximately the shape of a rounded triangle (see fig. 5b).

In regard to claim 14, McCord discloses a heat exchange system (exhaust pipe removes heat from the engine) comprising a tube and clamp assembly according to claim 13.

In regard to claim 15, a motor vehicle comprising a heat exchange system according to claim 14.

In regard to claims 16 and 17, wherein the rounded triangle is formed by:

a first bend (bend leading up to the side 20c) in the end portion,

a first portion (rounded bottom of 20) of the end portion which extends from the clamp to the first bend,

a second bend (top bend of 20) in the end portion,

a second portion of the end portion 20c which extends between the first bend and the second bend, and

an outermost portion (side leading from the top of 20 down the left side of 20 and back to 10) of the end portion which extends from the second bend to the end of the end portion.

In regard to claim 18, McCord discloses a circumferential clamp 10 ("for fastening and connecting junction tubes 12, 14 on a heat exchanger in a motor vehicle" is intended use language), wherein at least one end region of the clamp comprises a first bend point bottom right of 20 in fig. 5b) at which the end region is bent away from the tubes back toward the body of the clamp and a second bend point (top of 20) at which the end region bent further away from the tubes and further back toward the body of the clamp.

Allowable Subject Matter

4. Claims 10-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims

Response to Arguments

5. Applicant's arguments with respect to claims 1-4, 7-9 and 12-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

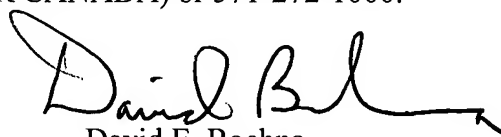
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (571) 272-7078. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "David E. Bochna", with a long horizontal flourish extending to the right.

David E. Bochna
Primary Examiner
Art Unit 3679